Supreme Court, U.S.
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No. 95-619

In the Supreme Court of the United States

OCTOBER TERM, 1995

TALAL H. ALZANKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court erred in admitting expert testimony.

2. Whether the court of appeals erred in reviewing the district court's decision to admit expert testimony under an abuse-of-discretion standard.

3. Whether there was sufficient evidence of actual or threatened physical or legal coercion to convict petitioner of holding a person in involuntary servitude, in violation of 18 U.S.C. 1584.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 54 F.3d 994.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1995. Pet. App. 25a. Justice Souter granted petitioner's motion to extend the time for filing a petition for writ of certiorari to and including October 16, 1995, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Massachusetts, petitioner was convicted of conspiring to hold a person in

involuntary servitude, in violation of 18 U.S.C. 371, and of holding a person in involuntary servitude, in violation of 18 U.S.C. 1584. Petitioner was sentenced to a term of imprisonment of one year and one day, and was ordered to pay $13,403 in restitution. The court of appeals affirmed.

1. Petitioner's family employed Vasantha Katudeniye Gedara, a native of Sri Lanka, for a brief time as a domestic servant in Kuwait. The family prevented Gedara from leaving the residence by retaining her passport and warning her that she would be subject to arrest and physical abuse by the Kuwaiti police if she ventured outside. Pet. App. 1a, 13a n.9.

Gedara was then sent to the United States to work for petitioner and his wife, Abair Alzanki. Immediately upon Gedara's arrival at the Alzankis' apartment in Massachusetts, petitioner confiscated her passport and forbade her to leave the residence alone. The Alzankis prohibited Gedara from using the telephone or the mails, speaking with persons other than the Alzankis, venturing onto the balcony, or even looking out of the apartment windows. Petitioner told Gedara that the American police, as well as the neighbors, would shoot undocumented aliens who ventured out alone. Pet. App. 2a; see also *id.* at 13a n.9, 20a.

During a four-month period, petitioner and his wife threatened Gedara almost daily "with deportation, death or serious harm should she disobey [their] orders." Pet. App. 3a. They told her that if she were deported, she would have to return to Kuwait and could not go back to her family in Sri Lanka. *Ibid.* The Alzankis also subjected Gedara to "physical abuse and inhuman treatment." *Ibid.* They physically assaulted her, withheld medical treatment when

she was injured, and deprived her of adequate food. *Id.* at 2a. The denial of food caused Gedara to experience serious symptoms of malnutrition, including an enlarged abdomen, massive hair loss, and cessation of her menstrual cycle. *Ibid.*

Gedara eventually complained about the abuse to nurses who visited the residence to care for the Alzankis' child. The nurses notified local authorities, who escorted Gedara from the Alzanki residence. Pet. App. 3a.

2. A federal grand jury returned a two-count indictment charging petitioner and his wife with conspiring to hold, and knowingly and willfully holding, Gedara in involuntary servitude, in violation of 18 U.S.C. 371 and 1584, respectively. Pet. App. 3a. Because of a medical emergency, the district court declared a mistrial as to petitioner's wife. *Ibid.* A jury returned guilty verdicts against petitioner on both counts of the indictment. *Ibid.*

3. The court of appeals affirmed. The court rejected petitioner's contention that the evidence was insufficient to support his conviction under 18 U.S.C. 1584. Relying on *United States* v. *Kozminski*, 487 U.S. 931 (1988), the court explained that, although the government need not show that the victim was physically restrained, a conviction under Section 1584 requires proof that the defendant intentionally held the victim in service against her will by "actual or threatened use of physical or legal coercion." Pet. App. 5a; see also *id.* at 6a. The court found that petitioner and his wife had subjected Gedara to such legal and physical coercion, including frequent threats of "deportation, death or serious harm should she disobey the Alzankis' orders" (*id.* at 3a; see also *id.* at 13a), and physical assaults designed to keep

Gedara "in her place." *Id.* at 13a. The court also emphasized petitioner's inhumane treatment of Gedara, including the "serious state of malnutrition," that Gedara suffered at the hands of petitioner and his wife. *Ibid.*

With regard to the threats of deportation, the court concluded that Gedara reasonably considered the consequences of a return to Kuwait to be "at least as severe as imprisonment." Pet. App. 14a. Several factors led the court to that conclusion. Kuwait was not Gedara's country of origin and the Alzankis had warned her that they would not allow her to return to her family in Sri Lanka. *Id.* at 3a, 20a. Gedara was familiar with the Kuwaiti practice of stationing soldiers at checkpoints to enforce restrictions on the movements of noncitizens, especially household servants. *Id.* at 14a n.10. She also had been told that Kuwaiti police beat and imprisoned foreign household servants who ventured out alone. *Id.* at 13a n.9, 20a. The court added that other "threats and warnings" supported the conviction, including petitioner's warning that the American police would shoot Gedara if she left the apartment alone. *Id.* at 14a n.10; see also *id.* at 20a.

The court of appeals further held that the district court had not abused its discretion in admitting expert testimony under Rule 702 of the Federal Rules of Evidence.[1] The expert, Ann Burgess, testified that

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[1] Rule 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

victims of abuse are often so overwhelmed by fear that they remain with their abusers instead of fleeing at the first opportunity. Petitioner argued on appeal that the expert's testimony was irrelevant and unduly prejudicial because, he asserted, the expert's specialty was the behavior of victims of sexual abuse, rather than the reactions of domestic workers subject to involuntary servitude. Pet. App. 15a. The court of appeals rejected that argument, observing that Burgess had conducted research regarding victim behavior in a range of abusive situations involving unequal power relationships. The court concluded that "expert testimony on this subject—which the defense was free to contradict—was 'reasonably likely' to assist the jury in understanding and assessing the evidence, in that the matter at issue was highly material, somewhat technical, and beyond the realm of acquired knowledge normally possessed by lay jurors." *Id.* at 17a. The court also rejected petitioner's argument that Burgess's testimony impermissibly bolstered Gedara's allegations. The court observed that the district judge had cautioned the jury that Burgess did not observe the events in the Alzanki household and, as a consequence, had no firsthand knowledge of what had occurred there. *Id.* at 17a-18a & n.13.[2]

ARGUMENT

1. Petitioner contends (Pet. 7-11) that the court of appeals adopted a restrictive reading of *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993), that conflicts with the decisions of other

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[2] Petitioner challenged his conviction on several other grounds, none of which are raised in the petition.

circuits. According to petitioner, the court of appeals held that *Daubert*'s admissibility criteria[3] do not apply to the psychological testimony at issue in this case or to non-scientific expert testimony in general. Petitioner is mistaken.

The court of appeals in this case did not hold that the criteria for the admission of expert testimony articulated in *Daubert* are inapplicable to psychological or non-scientific expert testimony. Indeed, the court cited *Daubert*, among other cases, for the proposition that trial judges have a duty to evaluate expert testimony proffered under Rule 702. See Pet. App. 16a (discussing trial court's "gatekeeping function" under Rule 702). Moreover, in addressing petitioner's challenges to the expert's testimony, the court found that the trial judge evaluated the relevance and reliability of that testimony (Pet. App. 17a), as required by this Court's decision in *Daubert*, 113 S. Ct. at 2795. Petitioner suggests (Pet. 8-9) that the court of appeals should have expressly discussed each of the *Daubert* factors in deciding whether the expert's testimony was admissible. The absence of

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[3] In *Daubert*, this Court articulated four factors to guide trial judges in determining whether proffered evidence is "scientifically valid" and thus qualifies as "scientific knowledge" under Rule 702. Those factors, which were not intended as a "definitive checklist or test," 113 S. Ct. at 2796, are (1) whether a theory or technique can be, or has been, tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error in using a particular technique and the existence and maintenance of standards controlling the technique's operation; and (4) whether a particular theory or technique has gained "general acceptance" within the relevant scientific community. *Id.* at 2796-2797.

such explicit analysis in the court's opinion can hardly be interpreted as a holding that the *Daubert* analysis is inapplicable to the type of testimony here. The court in this case simply had no reason to discuss the *Daubert* factors expressly in its opinion because they were not the focus of petitioner's arguments on appeal. See Pet. App. 15a-18a.[4] Accordingly, the question of the applicability of the *Daubert* analysis to psychological and other "non-scientific" expert testimony was neither presented to nor squarely addressed by the court of appeals in this case.

The court of appeals correctly affirmed the district court's determination that Burgess's testimony was "highly material" (Pet. App. 17a), was reasonably likely to assist the jury in understanding the issues, and would not impermissibly bolster the victim's credibility. *Id.* at 16a-18a. Petitioner has provided no reason to doubt the correctness of that ruling and, in any event, the fact-bound application of Rule 702 to the circumstances of this case does not warrant review by this Court. See *United States* v. *Nobles*, 422 U.S. 225, 241-242 n.16 (1975).

2. Petitioner next contends (Pet. 13-15) that the court of appeals erred in reviewing the district court's admission of expert testimony pursuant to Rule 702 for an abuse of discretion. That argument lacks merit. This Court has repeatedly recognized that trial judges have broad discretion to admit or

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[4] The United States did not challenge the applicability of the *Daubert* analysis to this case in the court of appeals. Rather, the government asserted in its brief in that court that the role of a district judge in screening proffered expert testimony "remains essentially the same" under *Daubert* regardless of whether the evidence is characterized as "scientific" material or other specialized knowledge. Gov't C.A. Br. 19-20 n.9.

exclude expert testimony, and that such evidentiary rulings will not be overturned absent an abuse of discretion. See, *e.g.*, *United States* v. *Nobles*, 422 U.S. at 241-242 n.16; *Hamling* v. *United States*, 418 U.S. 87, 108 (1974); *Salem* v. *United States Lines Co.*, 370 U.S. 31, 35 (1962). Nothing in this Court's *Daubert* decision casts doubt on the continuing applicability of that deferential standard of review.

Contrary to petitioner's contention (Pet. 13-15), the decision in this case is consistent with the rule applied in the Third, Seventh, and Ninth Circuits. Citing *In Re Paoli R.R. Yard PCB Litigation*, 35 F.3d 717 (3d Cir. 1994), cert. denied, 115 S. Ct. 1253 (1995), petitioner argues that the Third Circuit has applied *de novo* review "where expert testimony is concerned." Pet. 14. *Paoli*, however, held merely that, when a trial court's *exclusion* of scientific opinion testimony results in a summary judgment or directed verdict, the reviewing court "will give [the ruling] a 'hard look' * * * to determine if a district court has *abused its discretion* in *excluding* evidence as unreliable." 35 F.3d at 750 (emphasis added; citation omitted). *Paoli* thus reaffirms the applicability of the abuse-of-discretion standard to the present context.[5]

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[5] Although the court in *Paoli* suggested that its abuse-of-discretion review would be more exacting than usual where exclusion of expert testimony had precipitated summary judgment, that approach would not be applicable in the present case because the district judge admitted—rather than excluded—the challenged expert testimony. The court in *Paoli* emphasized that its "hard look" approach was justified because the Federal Rules of Evidence "display a preference for admissibility." *Paoli*, 35 F.3d at 750.

Similarly, the decisions in *Bradley* v. *Brown*, 42 F.3d 434 (7th Cir. 1994), and *Claar* v. *Burlington Northern R.R.*, 29 F.3d 499 (9th Cir. 1994), cited by petitioner (Pet. 14), merely restate the well established rule that a district court's construction of the Federal Rules of Evidence is a question of law subject to *de novo* review, while a trial judge's ruling as to the admissibility of particular evidence under that construction is entitled to substantial deference and should be upheld unless "manifestly erroneous," see *Bradley* v. *Brown*, 42 F.3d at 436-437; *Claar* v. *Burlington Northern R.R.*, 29 F.3d at 500-501—a standard that is essentially equivalent to abuse-of-discretion review. See, *e.g.*, *Patel* v. *Gayes*, 984 F.2d 214, 217 (7th Cir. 1993) (treating "manifestly erroneous" and "abuse of discretion" standards as synonymous); *United States* v. *Quintero*, 21 F.3d 885, 893 (9th Cir. 1994) (same); *United States* v. *Rahm*, 993 F.2d 1405, 1410 (9th Cir. 1993) (same). Subsequent decisions by the Seventh and Ninth Circuits, moreover, have confirmed that the abuse-of-discretion standard is the appropriate one for reviewing the admissibility of expert testimony under Rule 702. See, *e.g.*, *United States* v. *Anderson*, 61 F.3d 1290, 1297 (7th Cir.), cert. denied, 116 S. Ct. 543 (1995); *Daubert* v. *Merrell Dow Pharmaceuticals*, 43 F.3d 1311, 1315 (9th Cir.), cert. denied, 116 S. Ct. 189 (1995). There is no circuit conflict regarding the standard of review of evidentiary decisions under Rule 702.

3. Finally, petitioner asserts (Pet. 15-17) that the court of appeals' decision that the evidence was sufficient to support his convictions conflicts with *United States* v. *Shackney*, 333 F.2d 475 (2d Cir. 1964). Petitioner contends that the court of appeals found the requisite physical or legal coercion to have been

established in this case "solely in the threats of deportation to a friendly country" (Pet. 15), and that the decision therefore conflicts with *Shackney*, which overturned a conviction under 18 U.S.C. 1584 that rested exclusively on threats of deportation to the employees' home country of Mexico. There is no conflict with *Shackney*.

Contrary to petitioner's contention, and in contrast to *Shackney*, the court of appeals in this case did not base its holding solely on petitioner's threat to have Gedara deported to Kuwait. In the present case, the court of appeals explained that petitioner's conviction was further supported by substantial evidence of "other threats and warnings" (Pet. App. 14a n.10), including petitioner's threat to Gedara that the police would shoot her if she left the apartment alone. Moreover, in reviewing the evidence supporting petitioner's convictions, the court highlighted other physical coercion and mistreatment, including petitioner's assaults against Gedara and the serious malnutrition she suffered as a result of petitioner's actions. *Id.* at 13a-14a; see also *id.* at 3a ("In addition to the physical abuse and inhumane treatment, Gedara was threatened—on almost a daily basis—with deportation, death or serious harm should she disobey the Alzankis' orders.").

Even if the court of appeals had relied solely on the deportation threat, its decision would not conflict with *Shackney*. The defendant in *Shackney* threatened to have the alleged victims deported to Mexico, their country of origin. 333 F.2d at 477, 486. The court reversed the defendant's conviction under Section 1584, rejecting the proposition that "the statute can be satisfied * * * by a threat to have the employee sent back to the country of his origin, at

least absent circumstances which would make such deportation equivalent to imprisonment or worse." *Ibid.* The threats at issue in *Shackney* are clearly distinguishable from petitioner's threat to have Gedara sent to Kuwait (which was not her country of origin) and, thereby, to prevent her from returning to her family in Sri Lanka. Gedara believed that if she were sent back to Kuwait she would be subject to imprisonment and beatings if she tried to leave. Pet. App. 13a n.9 & 14a. The court of appeals thus concluded that, under such circumstances, Gedara could reasonably have believed that deportation to Kuwait would produce consequences "at least as severe as imprisonment." Pet. App. 14a.[6] In any event, as this Court observed in *Kozminski*, "threatening * * * an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude." 487 U.S. at 948.

Viewing the evidence in the light most favorable to the government, see *Jackson* v. *Virginia*, 443 U.S. 307, 319, (1979), the court of appeals correctly held that a rational trier of fact could have concluded beyond a reasonable doubt that Gedara was "forced to

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[6] Nor is there any conflict between the court of appeals' decision in this case and *United States* v. *Harris*, 701 F.2d 1095 (4th Cir.), cert. denied, 463 U.S. 1214 (1983) (cited at Pet. 16). The *Harris* court stated in *dicta* that "a mere reminder by the employer that the consequences of leaving will be exceedingly bad (*e.g.*, deportation) is not enough [to support a Section 1584 conviction]." 701 F.2d at 1100. The *Harris* case itself did not involve threats of deportation, nor does the decision in that case cast doubt on the validity of a Section 1584 conviction where, as here, the defendant combined threatened and actual violence with the threat of deportation to a country other than the victim's nation of origin.

work for [petitioner] by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process." *Kozminski*, 487 U.S. at 952. See Pet. App. 12a-15a. That holding does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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